IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE NINETEENTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 7243 of 2004

Between:

J.Mark S/o.Mani, The Dy.Executive Engineer, A.P.State Housing Corporation Ltd., Jawaharnagar, Markapur, R/o.Markapur, Prakasam Dist.

..... PETITIONER

AND

A.P.State Housing Corporation Ltd., rep.by its

Managing Director, Hyderabad.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ order or direction particularly one in the nature of writ of mandamus declaring the action of the respondent in not following the roster points for appointment by transfer as Asst. Engineer from the category of work Inspector as illegal and arbitrary and consequently directing the respondent to follow the roster points for appointment by transfer as Assistant Engineer from the category of work Inspector and appoint the petitioner against 25th vacancy which as earmarked for ST candidate but filled by OC candidate and also declaring that the Proceedings issued by the Managing Director, A.P. State Housing Corporation Ltd., Hyderabad in No.A8(1)/1989/2004, dated 29-1-2005 are illegal arbitrary and violative of articles 16 (4) of the Constitution and the roster envisaged under the rules

(Prayer is amended as per Court Order dt.25.3.2005 in WPMP 7668/2005)

Counsel for the Petitioner: MR.M.PANDURANGA RAO

Counsel for the Respondent: MR.K.MOHAN RAMI REDDY

The Court made the following :

The Hon'ble Sri Justice

K.C. Bhanu

W.P. No. 7243 of 2004

O R D E R:

The action of the respondent in not following the roster points is under challenge in this writ petition.

The case of the petitioner is that the rule of rotation or rule of reservation is not being followed properly by the respondent-Corporation and the posts earmarked for SCs/STs were filled up by OC candidates and the equal number of vacancies which are to be treated as backlog vacancies have never been carried forward. Even the committee appointed for welfare of SC/ST communities reviewed the roster in 1993 and 1994 and found that the vacancies earmarked for SCs and STs were filled up by OC candidates. Though he is entitled to be considered for appointment as Assistant Engineer in a vacancy earmarked for ST with effect from 1991, his case was ignored and others have been given promotion. Subsequently he was appointed as Assistant Engineer when 76 vacancies were filled up by transfer from the category of Work Inspectors in the year 2002. Subsequently the Government have decided that the vacancies meant for SC/STs should be filled up by them only and directed the Managing Director to take action for reverting the OCs from the category of Assistant Engineers and the same was challenged before this court on the ground that the Government has no power to

direct the Corporation to revert persons who have already been appointed by transfer. The grievance of the petitioner is that he is entitled to be considered for promotion as against vacancy earmarked for ST at roster point 25 in 100 point roster and he should have been appointed by transfer instead of one Ch. Ramanjaneyulu. Hence the writ petition.

The respondent filed counter affidavit denying that the employees of SC/ST were neglected and roster points were ignored. It is further stated, inter alia, that the rule of reservation was followed as per model roster from 1983 to 1991 and also as per roster prescribed in G.O.Ms.No.265 Social Welfare dated 24.10.1986. As per the model roster which was in force at that time, the roster point No.25 is meant for OC and Sri Ch.Ramanjaneyulu belongs to OC and he was the senior most Draughtsman of 1983 and accordingly he was promoted Assistant Engineer against 25th point. The petitioner was appointed on 3.6.1985 and junior to Sri Ch. Ramanjaneyulu and hence he cannot claim promotion as Asst. Engineer on par with Sri Ch. Ramanjaneyulu.

Learned counsel for the petitioner contended that Rule 22 of A.P. State and Subordinate Service Rules 1976 will govern the filling up of reserved posts and as per Rule 22, the 100 point roster has been fixed where under the 25th vacancy shall be reserved for S.T. candidate and though the vacancy arose in the year 1991 the petitioner was not appointed in the said vacancy though he is fully qualified. Hence he prays to direct the respondent to fix him at roster point No.25.

On the other hand, the learned standing counsel for the respondent-Corporation opposed the same on the ground that as per the Government Order in G.O.Ms.No.265 dated 24.10.1986 the respondent is following the model roster in force and as per the model roster the 26th post is meant for SC/ST but not 25th post and hence there are absolutely no grounds to interfere with the impugned proceedings.

The petitioner was appointed as a Technical Work Inspector in the year 1985. At that time each District was treated as a Unit for appointment. Therefore the roster points were worked out Districtwise. Thereafter seniority list was drawn up for the entire State and the seniority list of the State has been communicated taking either the District as Unit or the State as Unit. In the year 1991 a vacancy earmarked for S.T. had fallen vacant. Therefore the petitioner had to be appointed in the said vacancy. As per Section 22 of the State and Subordinate Rules, all the appointments under the said Rule shall be made in order of rotation specified duly in the Unit of 100 vacancies. As per this unit of 100 vacancies, the 25th vacancy is reserved for S.T. candidate. The respondent-Corporation passed the A.P. State Housing Corporation Limited Employees Special Service Rules. As per Section 4 of the said Rules, the rules of Special Representation (General Rule 22) shall be applicable to the appointments by direct recruitment to the categories of Assistant Engineers, Arch. Draughtsmen, Draughtmen (Civil) and Work Inspectors except insofar as it relates to appointment of physically handicapped persons. Rule 22 of Part-II has been amended by G.O.Ms.No.357 dated 23.6.1989 which shall be deemed to have

come into force w.e.f. 15.7.1986. Admittedly the vacancy arose in the year 1991. Therefore, the respondents ought to have followed the roster point as fixed by the Government in Rule 22. Even as per the counter affidavit filed by the respondents it is stated that the petitioner was sponsored by the Employment Exchange against SC/ST backlog vacancy as per model roster in force. In pursuance of the model roster which was prepared and approved by the Government in pursuance of G.O.Ms.No.265 Social Welfare (P) Department dated 24.10.1986 the vacancies have been filled up. The Government while considering the unit of appointments for the purpose of filling up 100 units have taken note of G.O.Ms.No.265 dated 24.10.1986 also. Therefore, for all practical purposes for filling up of vacancies as per the roster points, the G.O.Ms.No.357 dated 23.61989 would have to be followed, which has not been followed. Therefore the petitioner has to be appointed as Assistant Engineer at point No.25.

Hence, the writ petition deserves to be allowed and it is accordingly allowed setting aside the impugned orders passed by the respondent with the consequential direction to the respondent to fix the seniority of the petitioner at roster point No.25.

K.C. Bhanu, J.

Date: 19—07—2005.

MVB.

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Bilal Nazki, the Acting Chief Justice on this Thursday the nineteenth day of July two thousand and five.

T.HEMALATHA

Assistant Registrar

// TRUE COPY //

SECTION OFFICER

To

1. The Managing Director, A.P.State Housing Corporation Ltd.,

Hyderabad.

2. 2 CD copies